

(8)
No. 87-1031

Supreme Court, U.S.
FILED
MAY 6 1988
JOSEPH E. SPANIOLO JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

G.P. REED, PETITIONER

v.

UNITED TRANSPORTATION UNION, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER**

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QUESTION PRESENTED

Whether a claim by a union member under Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411-415, alleging that the union violated his right to free speech in an internal union dispute, is governed by the state statute of limitations applicable to personal injury actions, or by the six-month statute of limitations applicable to unfair labor practice charges under the National Labor Relations Act, 29 U.S.C. 160(b).

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INTEREST OF THE UNITED STATES

This case presents a question concerning the statute of limitations applicable in actions by union members under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 411-415. With one exception not relevant here (see 29 U.S.C. 414), Title I is enforced exclusively by private right of action. See 29 U.S.C. 412. Title I, however, shares the same aim as other titles of the LMRDA—specifically, “to ensure that unions would be democratically governed, and responsive to the will of the union membership as expressed in open, periodic elections” (*Finnegan v. Leu*, 456 U.S. 431, 441 (1982))—and the Secretary of Labor has significant enforcement responsibilities with respect to these other titles. See, e.g., Title II, 29 U.S.C. 431-441 (reporting); Title III, 29 U.S.C. 461-466 (trusteeships); Title IV, 29 U.S.C. 481-483 (union elections). Accordingly, the

Secretary of Labor has an interest in seeing that the proper statute of limitations is applied in LMRDA-Title I cases. The United States previously expressed the Secretary's views on this question in its brief amicus curiae in *Clift v. United Automobile Workers*, No. 87-42, submitted in response to the Court's invitation.

STATEMENT

1. Petitioner, G.P. Reed, is a member of respondent-union, United Transportation Union (UTU), and is Secretary-Treasurer of its Local 1715, in Charlotte, North Carolina (Pet. App. 2a, 50a).¹ In August 1982, UTU audited the books and records of Local 1715 and disallowed \$1,210 in reimbursement checks paid by Local 1715 to petitioner on the ground that petitioner had failed to obtain prior approval for the reimbursements (*id.* at 50a-51a). Petitioner refunded the disallowed checks to Local 1715, but protested to respondent Fred H. Hardin, the UTU president, that the prior approval requirement was being selectively applied to him in retaliation for his failure to support the views of Local 1715's president (*id.* at 2a-3a, 51a-52a). Respondent Hardin denied petitioner's protest in October 1982, stating that a local officer's regular salary is meant to cover the responsibilities of his office, and that the reimbursements disallowed had been claimed for the performance of ordinary duties and responsibilities of petitioner's office (*id.* at 3a-4a).²

¹ As Secretary-Treasurer of a local labor organization, petitioner is an elected official. See J.A. 28; 29 U.S.C. 402(n), 481(b). Next Term, the Court will address the extent to which an elected union official can state a claim under Title I of the LMRDA. See *Sheet Metal Workers v. Lynn*, cert. granted, No. 86-1940 (Mar. 21, 1988). That issue is not, however, presented here.

² The record indicates that petitioner, a part-time union official, claimed reimbursement for "time-lost" from his regular job to perform union duties. J.A. 17-21.

After petitioner made several additional but unsuccessful attempts to change Local 1715's allegedly discriminatory reimbursement policy, his attorney wrote to respondent Hardin, in July 1983, complaining that respondents' actions violated Section 101 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 411 (Pet. App. 4a-5a).³ Respondent Hardin answered

³ Section 101 of Title I of the LMRDA (29 U.S.C. 411) provides, in pertinent part:

(a)(1) *Equal rights*

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) *Freedom of speech and assembly*

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

* * * * *

(5) *Safeguards against improper disciplinary action*

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer

that the matter had been closed when petitioner refunded the disallowed reimbursements to Local 1715 (*id.* at 5a-6a). Petitioner's attorney then sent respondent Hardin another letter, stating that he had advised petitioner of respondent Hardin's answer, and informing respondent Hardin that he had advised petitioner "to commence litigation on or about September 15, 1983, unless the Union ha[d] properly reviewed and reconciled this matter" (*id.* at 6a (citation omitted)).

Petitioner did not, however, commence this action until August 2, 1985, exactly two years after his attorney's last letter to respondent Hardin (Pet. App. 6a). In his complaint, petitioner alleged that respondent union and various union officials had violated his rights to freedom of speech and assembly, as well as his right to be safeguarded from improper disciplinary action, protected by Section 101 of Title I of the LMRDA (Pet. App. 6a-7a). Specifically, he claimed that the "prior approval" policy for reimbursements had been selectively applied to him as a means of punishing him for speaking out against Local 1715's president (*id.* at 7a-8a). Respondents denied the claim, and moved for summary judgment on the ground, *inter alia*, that petitioner had failed timely to commence his action within the six-month statute of limitations period set forth in Section 10(b) of the National Labor Relations Act (NLRA) (29 U.S.C. 160(b)), which respondents claimed governs actions under Title I of the LMRDA (Pet. App. 53a). Petitioner opposed the motion, arguing that he had timely commenced his action within the three-year limitations period applicable to personal in-

thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; [and] (C) afforded a full and fair hearing.

jury actions in North Carolina, which he claimed governs his LMRDA-Title I claim (Pet. App. 39a-40a).

2. The district court denied respondents' motion for summary judgment, agreeing with petitioner that the three-year state statute of limitations applicable to personal injury claims governs actions under Section 101 of Title I of the LMRDA (Pet. App. 1a-45a). It noted that, "[b]ecause Congress has not explicitly provided a limitations period for such claims, the [c]ourt must 'borrow' the most appropriate statute of limitations from some other source" (*id.* at 10a). And it further noted that, in *Howard v. Aluminum Workers Int'l Union*, 589 F.2d 771 (1978), the Fourth Circuit had found that a claim under Section 101 of the LMRDA is similar to a personal injury claim under state law and, accordingly, that the state limitations period applicable to such personal injury claims should govern claims under Section 101 of the LMRDA (Pet. App. 10a-11a).

The court rejected respondents' argument that, under this Court's decision in *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151 (1983), the six-month statute of limitations applicable to unfair labor practice charges under the NLRA should apply to LMRDA-Title I claims (Pet. App. 11a-41a). It reasoned that, in contrast to the "hybrid" breach of contract/duty of fair representation claim that was at issue in *DelCostello*, "a union member's LMRDA Title I claim does not arise out of a labor-management relationship, but rather out of the union member's relationship with his union"; "[i]t impacts only tangentially, if at all, on the union's bargaining relationship with the employer"; and an LMRDA-Title I suit does not involve "those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective bargaining agreement and the private settlement of disputes under it" (*id.* at 37a-38a (citations

omitted)). Rather, the court concluded, "an LMRDA Title I claim more closely resembles a civil rights claim that an unfair labor practice charge" (*id.* at 38a).

On this basis, the court determined to apply North Carolina's three-year limitations period for personal injury actions to petitioner's claim and, under that statute, held petitioner's claim to be timely filed (Pet. App. 39a-40a). Because, however, the circuits were divided on this controlling question of law,⁴ the district court certified the question for immediate review by the court of appeals (*id.* at 40a-41a).

3. The Fourth Circuit reversed (Pet. App. 48a-70a). Acknowledging the conflict among the circuits on the applicability of this Court's reasoning in *DelCostello* to claims raised under Title I of the LMRDA, the court reviewed the leading cases and concluded (Pet. App.

⁴ Since *DelCostello*, two courts of appeals have applied state limitations periods for personal injury actions to Title I claims. See *Doty v. Sewall*, 784 F.2d 1 (1st Cir. 1986) (denial of union membership to dissident); and *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967 (2d Cir. 1987) (union discipline against members of rival political faction). The First Circuit has, however, also applied Section 10(b) of the NLRA to a "hybrid" Railway Labor Act/LMRDA claim based on an employment-related grievance. See *Linder v. Berge*, 739 F.2d 686 (1984). Other circuits have applied Section 10(b) of the NLRA to various Title I claims. See *Local Union 1397 v. United Steelworkers*, 748 F.2d 180 (3d Cir. 1984) (discipline imposed by international union on local union leaders); *Davis v. UAW*, 765 F.2d 1510 (11th Cir. 1985), cert. denied, 475 U.S. 1057 (1986) (expulsion of dissident union member); *Clift v. UAW*, 818 F.2d 623 (7th Cir. 1987), petition for cert. pending, No. 87-42 (LMRA/LMRDA challenge to modification of collective bargaining agreement); *Adkins v. International Union of Electrical Workers*, 769 F.2d 330 (6th Cir. 1985) (LMRA/LMRDA challenge to negotiation and implementation of collective bargaining agreements).

49a-50a, 67a) that the "pro-*DelCostello*" view of the Third Circuit, as set forth in *Local Union 1397 v. United Steelworkers*, 748 F.2d 180 (1984), was more persuasive than the "anti-*DelCostello*" view of the First Circuit, as set forth in *Doty v. Sewall*, 784 F.2d 1 (1986). The court of appeals agreed with the Third Circuit's analysis in *Local 1397* that LMRDA "claims, though they be akin to civil rights claims, cannot be divorced from the federal labor policy favoring stable labor-management relations" (Pet. App. 67a). The court noted that, "[i]nternal union disputes, if allowed to fester, may erode the confidence of union members in their leaders and possibly cause a disaffection with the union, thus weakening the union and its ability to bargain for its members" (*id.* at 67a-68a); and it added that "[s]uch prolonged disputes may also distract union officials from their sole purpose—representation of union members in their relations with their employer" (*id.* at 68a). The court therefore rejected the First Circuit's reasoning in *Doty* that a union member's LMRDA-Title I claim may implicate only internal union matters and thus poses no threat to the stability of the labor-management relationship (*id.* at 64a, 67a-69a). For this reason, it held the six-month limitations period of the NLRA applicable to LMRDA-Title I claims (*id.* at 69a).

SUMMARY OF ARGUMENT

The court of appeals erred in applying the NLRA's six-month statute of limitations to a claim under Title I of the LMRDA. The better approach is to analogize LMRDA-Title I claims to civil rights claims and to borrow applicable state statutes of limitations for personal injury actions. On this view, we submit that the decision below should be reversed.

1. When a federal statute prescribes no limitations period, a suitable period must be borrowed from some other source. In identifying which statute of limitations should be borrowed, the Court has said that a determination should be made, first, whether the statute of limitations selected should be uniform and, second, whether the closest analogy is in state or federal law. See *Agency Holding Corp. v. Malley-Duff & Assocs.*, No. 86-497 (June 22, 1987), slip op. 4, 6. With respect to the first question, a uniform characterization is appropriate; Title I of the LMRDA creates a "bill of rights" for union members, and the variety of underlying claims is susceptible to a multiplicity of characterizations. Thus, using more than one characterization would lead to uncertainty and wholly unproductive litigation. With respect to the second question, the best analogy for claims under Title I of the LMRDA lies in state law. Title I claims are akin to civil rights claims under the federal constitution and, in the context of other statutes securing basic civil rights against violation by state or private action, this Court has held that the state statutes of limitations for personal injury actions should govern. Thus, the district court's resort to the State of North Carolina's three-year limitations period for personal injury claims was correct.

2. The court of appeals resorted to the six-month statute of limitations applied by this Court in *DelCostello* to "hybrid" breach of contract/duty of fair representation claims under Section 301 of the Labor-Management Relations Act (LMRA) (29 U.S.C. 185). But the *DelCostello* analogy is inapt, because LMRDA claims differ in significant respects both from the hybrid breach of contract/duty of fair representation claims at issue in *DelCostello* and from the unfair labor practice claims to which the six-month limitations period of Section 10(b) of the NLRA was designed to apply.

Claims under Title I of the LMRDA, unlike hybrid breach of contract/duty of fair representation claims, will rarely, if ever, amount to unfair labor practices under the NLRA. Title I claims allege violations of "union democracy," and thus are concerned with the internal operation of the union. Claims under the NLRA, by contrast, generally relate to matters involving an employee's relationship with his or her employer and ordinarily do not relate to an employee's relationship with the union structure. And even when an internal union matter properly forms the basis for an unfair labor practice charge, its elements are distinct from the elements of an LMRDA claim. Thus, while the unfair labor practice provisions of the NLRA provided a reasonable analogy to the claims at issue in *DelCostello*, the same cannot be said here.

Furthermore, LMRDA claims will rarely, if ever, implicate the same balance of interests presented by a "hybrid" breach of contract/duty of fair representation action, or an unfair labor practice charge raising this issue. Generally, as in this case, an LMRDA claimant does not challenge any part of the collective bargaining or grievance/arbitration process; the LMRDA claimant generally challenges only internal union matters. Such challenges cannot directly upset the balance of power in labor-management relations struck by the NLRA. Of course, even in cases where a closer factual nexus exists between the LMRDA claim and the collective bargaining or grievance adjustment process, the relief available under the LMRDA generally cannot extend to setting aside the results of the collective bargaining or grievance adjustment process. Title I authorizes no relief against employers; LMRDA claimants are basically limited to relief against the union. In any event, even if the relief available could be said to implicate the collective bargaining or grievance adjustment processes, it would be wrong

to equate the balance of policy concerns at issue in an NLRA or LMRA case with the balance at issue in an LMRDA case; Congress did not purport to weigh an individual's statutory interest in freely participating in union affairs in the balance when it concluded, in Section 10(b) of the NLRA, that unfair labor practice claims should have a six-month statute of limitations.

Finally, the practical litigation problems that made resort to state law inappropriate in *DelCostello* are absent in LMRDA-Title I cases. Unlike the typically short state limitations periods governing vacation of arbitration awards rejected in *DelCostello*, the one-to-three year limitations periods commonly applicable to personal injury claims provide union members with adequate time to vindicate their LMRDA rights. Moreover, in contrast to the situation at issue in *DelCostello*, resort to state law will not, in the LMRDA context, result in two different limitations periods being applied to the same claim. Finally, a limitations period longer than six months is not too long; the LMRDA protects the rights of union members to participate freely in union affairs and, in the context of analogous civil rights claims, the Court has held that one-to-three year limitations periods do not undermine the stability of labor-management relations to an unacceptable degree.

ARGUMENT

The court of appeals erred in applying the six-month statute of limitations of the NLRA to a claim under Title I of the LMRDA. An LMRDA-Title I claim is best analogized to a civil rights claim. According to this Court's decisions, in cases involving such civil rights analogies, state statutes of limitations for personal injury actions should be applied to such claims. Concomitantly, the

reasoning of the Court in *DelCostello*, which applied the six-month statute of limitations of the NLRA to a hybrid breach of contract/duty of fair representation claim, is inapt in the LMRDA-Title I context. Accordingly, the contrary decision of the court below should be reversed.

1. Where a federal statute does not contain an express statute of limitations for actions brought under its civil enforcement provisions, as is true of Title I of the LMRDA,³ this Court has said that it will " 'borrow' the most suitable statute or other rule of timeliness from some other source" (*DelCostello v. International Bhd. of Teamsters*, 462 U.S. at 158). To identify which limitations period it will borrow, the Court follows a two-step decision process. First, it determines whether "a uniform statute of limitations is required to avoid intolerable 'uncertainty and time-consuming litigation.' " *Agency Holding Corp. v. Malley-Duff & Assocs.*, No. 86-497 (June 22, 1987), slip op. 6 (quoting *Wilson v. Garcia*, 471 U.S. 261, 272 (1985)). Having made that judgment, it then "inquir[es] whether a federal or state statute of limitations should be used" (*Agency Holding Corp.*, slip op. 4), keeping in mind that, with respect to this inquiry, " 'resort to state law remains the norm' " and that a federal statute of limitations should be borrowed only when federal law " 'clearly provides a closer analogy than available state statutes' " and " 'the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking' " (*ibid.* (quoting *DelCostello v. International Bhd. of Teamsters*, 462 U.S. at 171-172)). Ap-

³ Section 102 of the LMRDA, 29 U.S.C. 412, provides that "[a]ny person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

plication of this two-step process leads, we believe, to a different conclusion than that reached by the court of appeals below.

With respect to the first prong of the inquiry, we are inclined to believe that a uniform statute of limitations is particularly appropriate for claims under Title I of the LMRDA. Title I creates a "bill of rights" for union members, protecting their rights to speak, assemble, have an equal vote in union affairs, participate in union meetings, receive a copy of collective bargaining agreements negotiated by the union, and have due process protection against unfair union discipline. See 29 U.S.C. 411-415, 529; see generally *Local 82, Furniture Moving Drivers v. Crowley*, 467 U.S. 526, 536-537 (1984); *United Steelworkers v. Sadlowski*, 457 U.S. 102, 109-110 (1982). As the decisions of the courts of appeals evidence, the various types of claims that may be brought under this "bill of rights" are similar to a wide range of common law and statutory causes of action. See, e.g., *Clift v. UAW*, *supra* (applying limitations period for unfair labor practice charges under the NLRA); *Doty v. Sewall*, *supra* (applying limitations period for personal injury claims); *Trotter v. International Longshoremen's Union, Local 13*, 704 F.2d 1141 (9th Cir. 1983) (applying limitations period for liabilities created by statute); *Dantagnan v. ILA, Local 1418*, 496 F.2d 400 (5th Cir. 1974) (applying limitations period for breach of contract claims); *Sewell v. Grand Lodge of Int'l Ass'n of Machinists*, 445 F.2d 545 (5th Cir. 1971), cert. denied, 404 U.S. 1024 (1972) (applying limitations period for tort claims). Thus, unless Title I claims are governed by a uniform characterization for limitations period purposes, there will likely be much unproductive litigation and considerable uncertainty for LMRDA plaintiffs and defendants. In similar circumstances, this Court

has said that there is reason to believe that Congress would have preferred that a single characterization be given to all claims arising under the federal statute. See *Wilson v. Garcia*, 471 U.S. at 274-275 (42 U.S.C. 1983); *Agency Holding Corp.*, slip op. 5-7 (RICO).

With respect to the second prong of the inquiry, the task of identifying an appropriate statute of limitations does not seem an especially difficult one. Title I of the LMRDA is a kind of federal "civil rights" statute "aimed at enlarged protection for members of unions paralleling certain rights guaranteed by the Federal Constitution." *Finnegan v. Leu*, 456 U.S. 431, 435 (1982). Accord, *Doty v. Sewall*, 784 F.2d at 6; *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 976-977 (2d Cir. 1987); 105 Cong. Rec. 6471-6472 (1959) (statement of Sen. McClellan). In the context of other statutes securing similar basic civil rights against violation by state or private action, this Court has said that the state law limitations period relating to personal injury actions should govern. See *Goodman v. Lukens Steel Co.*, No. 85-1626 (June 19, 1987), slip op. 3-4 (two-year state statute of limitations governing personal injury claims applies to claims under 42 U.S.C. 1981); *Wilson v. Garcia*, 471 U.S. at 276-280 (three-year state statute of limitations governing personal injury claims applies to claims under 42 U.S.C. 1983). Unless there are convincing reasons to depart from this approach, it follows that the relevant state limitations period for personal injury actions should govern claims under Title I of the LMRDA as well. Such an approach was in fact taken in this case by the district court, which borrowed North Carolina's three-year limitations period for personal injury actions. See Pet. App. 39a (discussing N.C. Gen. Stat. § 1-52 (1987)).

2. The court below concluded that the reasoning of this Court in *DelCostello v. International Bhd. of*

Teamsters, supra, required that the six-month statute of limitations of Section 10(b) of the NLRA be applied to LMRDA-Title I claims. But the court below failed to appreciate the marked differences between the type of claim at issue in *DelCostello* and the type of claim at issue under Title I of the LMRDA. These differences render the reasoning of the Court in *DelCostello* inapplicable to LMRDA-Title I claims.

In *DelCostello*, the Court was presented with a hybrid action under Section 301 of the Labor-Management Relations Act (LMRA) (29 U.S.C. 185), alleging that the employer had breached a collective bargaining agreement and that the union had breached its duty of fair representation (462 U.S. at 163-164). In declining to apply a state law statute of limitations in that instance,⁶ the Court in *DelCostello* stressed several factors that made Section 10(b) of the NLRA a "more apt [analogy] than any of the suggested state-law parallels" that might apply to the LMRA claim in that case (462 U.S. at 169 (footnote omitted)). Specifically, the Court noted that a "hybrid" breach of contract/duty of fair representation claim under Section 301 of the LMRA will often, if not always, also amount to an unfair labor practice under the NLRA (462 U.S. at 170); that, in such a case, the LMRA and NLRA actions implicate an identical balance of interests—i.e., "the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective-bargaining system" (*id.* at 170-171 (citation omitted)); and that substantial practical problems

⁶ The Court had previously borrowed from state law in setting the appropriate limitations periods for breach of contract actions by unions against employers under Section 301 of the LMRA. See *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966).

weigh against applying the available state law limitations periods for the breach of contract and unfair representation claim that are inextricably intertwined in this kind of Section 301 action (462 U.S. at 172; see also *id.* at 165-169).

Claims under Title I of the LMRDA, unlike hybrid breach of contract/duty of fair representation actions under Section 301 of the LMRA, will rarely, if ever, amount to unfair labor practices under the NLRA. LMRDA-Title I claims allege violations of "union democracy," and thus are concerned with the internal operation of the union—i.e., the relationship between union members, the union, and union officers. See *Hester v. International Union of Operating Engineers*, 818 F.2d 1537, 1540 (11th Cir. 1987); *Doty v. Sewall*, 784 F.2d at 6-7; *Abrams v. Carrier Corp.*, 434 F.2d 1234, 1250-1251 (2d Cir. 1970), cert. denied, 401 U.S. 1009 (1971). Claims under the NLRA, on the other hand, generally relate to matters involving an employee's relationship with his employer; they ordinarily do not relate to an employee's relationship with the union structure. See *Kolinske v. Lubbers*, 712 F.2d 471, 481 (D.C. Cir. 1983); *Price v. UAW*, 795 F.2d 1128, 1133-1135 (2d Cir. 1986). An internal union matter may form the basis for an unfair labor practice charge only if it has a "substantial impact" on the employee's relationship with his employer or impairs a fundamental policy embedded in the NLRA. See, e.g., *Pattern Makers' League v. NLRB*, 473 U.S. 95, 102-107 (1985); *International Bhd. of Teamsters, Local 310 v. NLRB*, 587 F.2d 1176, 1183 & n.31 (D.C. Cir. 1978). Even then, however, the elements of such an unfair labor practice charge will be distinct from the elements of an LMRDA case arising out of the same set of facts. The unfair labor practice charge will focus on the unequal

employment status and impairment of NLRA policies allegedly caused by particular acts of the union, while the LMRDA claim will focus on the unequal opportunity to participate in union affairs allegedly caused by those or other actions of the union. See *Doty v. Sewall*, 784 F.2d at 6-7. Thus, while the unfair labor practice provisions of the NLRA provided an appropriate analogy for the LMRA claims at issue in *DelCostello*, where the LMRA claims also resembled unfair labor practice charges, the same cannot be said here.

For similar reasons, it is relatively clear that LMRDA claims will rarely, if ever, implicate the balance of interests presented by a hybrid breach of contract/duty of fair representation action brought under Section 301 of the LMRA (or its parallel unfair labor practice charge under the NLRA). Generally, as in this case, an LMRDA claimant does not challenge any part of the collective bargaining or grievance adjustment process. Rather, an LMRDA claimant generally challenges only internal union actions. See, e.g., *Doty v. Sewall*, *supra* (denial of union membership to dissident); *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967 (2d Cir. 1987) (union discipline against members of rival political faction); *Local Union 1397 v. United Steelworkers*, 748 F.2d 180 (3d Cir. 1984) (discipline imposed by international union on local union leaders); *Davis v. UAW*, 765 F.2d 1510 (11th Cir. 1985), cert. denied, 475 U.S. 1057 (1986) (expulsion of dissident union member). Such claims are entirely "freestanding" from the collective bargaining and grievance adjustment process. Accordingly, they cannot and do not involve the identical policy concerns that Section 10(b) of the NLRA seeks to balance.

To be sure, in some circumstances, as was true in *Clift v. UAW*, *supra*, an LMRDA claimant may challenge a

union action that has a causal nexus with the collective bargaining or grievance adjustment process. In such cases, the LMRDA claimants obviously will *want* to set aside the results of the collective bargaining or grievance adjustment process; and, to the extent their wishes are honored, their LMRDA claims, like the claims involved in *DelCostello*, will implicate the national interests in stable bargaining relationships and finality of private settlements that have informed the choice of limitations period under the NLRA and the LMRA. But the reality is that such relief will generally not be available to LMRDA claimants. Most retroactive relief relating to the collective bargaining or grievance adjustment process would exceed the "minor" and "ancillary" provisions of an injunction to which the employer, who is not regulated by the LMRDA (*American Postal Workers Union, Local 6885 v. American Postal Workers Union*, 665 F.2d 1096, 1109 & n.26 (D.Cir. Cir. 1981); *Hayes v. Consolidated Service Corp.*, 517 F.2d 564, 566 (1st Cir. 1975)), could properly be subjected. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. at 168 n.17 (where employer cannot be sued, equitable remedy such as order to arbitrate cannot be imposed); *General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 399-401 (1982) (employer who has not violated substantive rights of plaintiff may only be subjected to "minor" and "ancillary" provisions of injunctive order against union). Rather, LMRDA plaintiffs will ordinarily be limited to relief solely against the union, which may include declaratory relief, injunctive relief, compensatory damages, and possibly punitive damages. See *Parker v. Local Union No. 1466, United Steelworkers*, 642 F.2d 104 (5th Cir. 1981); *Christopher v. Safeway Stores, Inc.*,

476 F. Supp. 950 (E.D. Tex. 1979), *aff'd*, 644 F.2d 467 (5th Cir. 1981).⁸

In any event, even in those circumstances where the available relief might implicate the collective bargaining or grievance adjustment process, the LMRDA claim, unlike the LMRA claim involved in *DelCostello*, will also involve an allegation that the union has deprived an individual of his statutorily-created right freely to participate in union affairs. Congress did not purport to weigh this interest in the balance when it concluded, in Section 10(b) of the NLRA, that unfair labor practice charges should be governed by a six-month statute of limitations. Accordingly, even if the "friction" associated with LMRDA claims can possibly be said to impair or threaten the collective bargaining or grievance adjustment process, it cannot be concluded either that such LMRDA claims are the same as those authorized by the NLRA or that the balance of policy concerns at stake is indistinguishable from the balance struck by Section 10(b) of the NLRA.

Finally, the practical litigation problems that concerned the Court in *DelCostello* and that made resort to state law inappropriate there are not present with respect to the LMRDA-Title I claims at issue here. In contrast to the very short state limitations period governing vacation of arbitration awards considered by the Court in *DelCostello*, most if not all states allow at least one year in which to file personal injury actions. Such a limitations period plainly provides aggrieved union members with

⁸ Of course, claimants in such a case can still seek relief, including rescission or modification of a collective bargaining agreement, against the employer in their hybrid Section 301 action. Such relief, however, is subject to the NLRA's six-month limitations period.

adequate time for attempting to vindicate their LMRDA rights. Cf. *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975) (borrowing one-year limitations period for enforcement of claim under 42 U.S.C. 1981). Moreover, unlike the LMRA claim at issue in *DelCostello*, which required proof of separate unlawful actions by both the employer and the union, LMRDA claims require proof only of unlawful action by a union. Thus, resort to state law will not result in two different limitations periods being applied to the same claim — e.g., a 90-day arbitration statute for the claim against the employer, and a three-year malpractice statute for the claim against the union. See *DelCostello*, 462 U.S. at 157-158. Finally, a limitations period longer than six months is not inappropriate here, as it was in *DelCostello*, because LMRDA claims involve the added concern (absent in *DelCostello*) that the right of free participation in union affairs be secured. The Court has held equally long limitations periods appropriate for similar kinds of civil rights claims. See *Goodman v. Lukens Steel Co.*, *supra* (two-year limitations period applied to civil rights claim under 42 U.S.C. 1981); *Wilson v. Garcia*, *supra* (three-year limitations period applied to civil rights claim under 42 U.S.C. 1983).

3. In short, resorting to Section 10(b) of the NLRA rather than to state law for a statute of limitations to govern actions brought under Title I of the LMRDA does not appear to us to be appropriate. The considerations that made Section 10(b) a suitable limitations period for "hybrid" LMRA claims do not apply with the same force to *any* LMRDA claim. Furthermore, there is an appropriate state law analogy for *all* such LMRDA claims — i.e., the limitations period governing state law personal injury actions. Finally, while *some* LMRDA claims may be tangentially related to the collective

bargaining and grievance adjustment processes, and thus have some potential for disrupting collective bargaining relationships to some small degree, *no* LMRDA claim has the potential for producing any greater degree of disruption than claims initiated under other federal civil rights statutes; and the Court has consistently held that those federal civil rights claims should be governed by state limitation periods relating to personal injury actions. See, e.g., *Goodman v. Lukens Steel Co.*, *supra*. We do not see a sound basis for reaching a different conclusion here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MAY 1988